IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL REVISION PETITION NO.51/05

Jitendra

Versus

Smt. Kaushalya Devi & Ors.

DATE OF ORDER :: 05/07/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Ashok Sharma, for petitioner
Mr. Sanjay Tyagi, for respondents

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Instant revision has been filed by plaintiff-petitioner assailing the order of learned trial Judge dated 4th August, 2004 whereby application filed U/O 9(2)(3) & 4-9 read with Section 151 CPC for restoration of suit filed by him stood dismissed under the order impugned.

Plaintiff-petitioner filed a suit for partition and after the parties led evidence, the matter was fixed for final hearing on 23rd February, 2004, but for personal reason, the lawyer could not appear on behalf of plaintiff, the matter was posted for 24th February, 2004 and at 10.30 AM itself learned trial Judge while closing his arguments, dismissed the suit for default on 24th February, 2004. Without any further loss of time, petitioner filed application for restoration and recalling of order dated 24th February, 2004 on 3rd March, 2004.

The same has been dismissed by learned trial Judge under the order impugned.

I have heard counsel for parties at length and this court is of the opinion that learned trial Judge has committed serious error in dismissing the application filed by plaintiff-petitioner for restoration and the reason which has been assigned for passing of the order impugned is not legally sustainable.

Consequently, the revision petition stands allowed. The order dated 4th August, 2004 passed by learned trial Judge is set aside. Parties are directed to appear before learned trial Judge on 6th August, 2007. It is expected from learned trial Judge to dispose of the matter expeditiously in accordance with law.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.